



S T A T E B A R O F M I C H I G A N

To: House Criminal Justice Committee Members

From: Peter Cunningham, Director of Governmental Relations

Date: May 19, 2015

Re: **HB 4476 – Domestic Relations**

The State Bar of Michigan opposes HB 4476 as introduced. We are willing to work with the sponsor of the bill to address our specific concerns listed below.

The State Bar of Michigan opposes HB 4476 as introduced. We are willing to work with the sponsor of the bill to address our specific concerns listed below.

The bill conflicts with current court that allows a judge to decide whether mediation is better or worse for each particular survivor, given the resources in the community and the facts of the case. The court rule is MCR 3.216(C)(1)-(3) which states:

- (1) On written stipulation of the parties, on written motion of a party, or on the court's initiative, the court may submit to mediation by written order any contested issue in a domestic relations case, including postjudgment matters.
- (2) The court may not submit contested issues to evaluative mediation unless all parties so request.
- (3) Parties who are subject to a personal protection order or who are involved in a child abuse and neglect proceeding may not be referred to mediation without a hearing to determine whether mediation is appropriate.

It is the hearing in section (3) above that is critical. The hearing allows a judge to determine whether or not mediation is appropriate on a case-by-case basis. There is a concern that this bill, by eliminating this crucial part of the process, would allow an abuser to avoid mediation in order to force the survivor to testify against the abuser. The abuser will know that the survivor will not want to testify, and that the survivor will quickly cave in settlement negotiations just to avoid going to court. This bill would prevent a survivor who wants to and is capable of appropriately navigating their case in mediation from doing so.

If you would like to discuss this position in further detail or have questions, please contact me directly at your convenience.

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